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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.1
09/544,004	04/06/2000	Asgeir Saebo	CONLINCO-04284	7988

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EXAMINER

WANG, SHENGJUN

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 01/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/544,004

Applicant(s)

SAEBO ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35,37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-19,24,25,37 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18, 19 6) ☐ Other: _____

DETAILED ACTION

The Request for a Continued Examination (RCE) under 37 CFR 1.114 filed on October 21, 2002 based on parent Application No. 09/544004 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections 35 U.S.C. §103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-19, 24-35 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over both Cook et al. (U.S. Patent 5,760,082, IDS) and Lievense et al. (U.S. patent 6,159,525) in view of Cain et al. (WO 97/18320, IDS)

3. Cook teaches a food product containing conjugated linoleic acids, their esters, salts or mixtures. The linoleic acid compounds may be from corn oil, safflower etc. the food products may further containing vitamins. See, particularly, the abstract, column 1, lines 10-13, lines 49-60. Column 2, lines 51-67, Examples 3 and 5. Cook further teaches that conjugated linoleic acid may be incorporated into various food products. See column 5, lines 6-14. Lievense et al teaches a food products comprising CLA compounds which has sensoric properties as good as corresponding food product without CLA.

4. The primary references do not teach expressly the employment of ascorbic acid or particularly point out the amount of VOC.

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5. However, Cain teaches that CLA is known to be sensitive to oxygen and addition of antioxidant to a composition comprising CLA is recommended. The antioxidants is selected from the groups consisting of tocopherols, TBHQ, BHT, BHA, free radical scavengers, propylgallate, ascorbylesters of fatty acids. See, page 6, lines 29-36 and claims 10 and 13-15.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ vitamin C in the composition, or food products in Cook or Lievense.

A person of ordinary skill in the art would have been motivated to employ vitamin C in the composition, or food products in Cook or Lievense because vitamins are known to be useful with CLA in food products, and vitamin C is one of well-known antioxidants which are known to be useful in CLA composition for stabilizing CLA compounds. Regarding to the limitation about the amount of VOC, since the prior art teach that the food products containing CLA do not have any sensoric property caused by VOC, the amount of VOC is reasonably believed to be very low. The amount of VOC claimed herein is either within the scope of the prior art, or an obvious variation of the prior art, lacking the criticality to the final products. Regarding the particular function of vitamin C claimed herein, i.e., metal chelator, note the intended function of a component in a composition would not render any patentable weight to the composition.

Response to the Arguments

Applicants' amendments and remarks submitted October 21, 2002 have been fully considered, but are not persuasive for reasons discussed below.

Applicants' assertion that the cited references suggest the presence of VOC has no factual base. Lievense teaches CLA and food product containing the same. If the CLA composition

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containing VOC and smelly, it can not be used in food product. In contrary to applicants' assertion that Cain fails to "appreciate the CLA oxidation problem and thus offer no guidance for solving it." Cain expressly teaches the employment of antioxidants in CLA composition. Further, applicants admit that CLA composition accumulates VOC only after being stored in metal container for a long period of time, or at above room temperature. See page 23-25 in the specification. There is no reasons to assert that the CLA disclosed in the references containing VOC. Finally, as stated by Cain, it is well known that polyunsaturated fatty acid are very sensitive for oxygen, the employment of known antioxidant in a CLA composition is prima facie obvious.

Applicants' rebuttal arguments regarding "reasonable expectation of success," are not probative. First, it is not clear as to the meaning of "success" herein. If the success means not VOC, no smell, the references obviously have achieved such goal, evidenced by the employment of CLA composition in food product. The references may not expressly teach the detailed mechanism of oxidation herein. However, the references provide ample motivation to employ antioxidant to solve the ultimate problem (oxidation).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner

A handwritten signature in black ink, appearing to read 'S. Wang' with a stylized flourish at the end.

Shengjun Wang

January 5, 2003